

## REMARKS

### A. Procedural Posture and Election with Traverse

Claims 3, 7-16 and 47-63 are pending in this application.

The Examiner, in the non-final Office Action mailed March 16, 2007, restricted these same claims into the following two groups:

1. Claims 3, 7-16 and 47-51; and
2. Claims 52-63.

The Examiner alleges that within Group 1, claims 3, 7-16 and 48-51 link two inventions set out in claim 47. More specifically the Examiner states the sequences in the Markush group (i.e., SEQ ID NOS: 12-19) in claim 47, which recites a second sequence (wherein said second sequence is an immunostimulatory sequence) capable of binding to a second target, need to be further restricted into the following two groups: i) SEQ ID NOS: 12-16 and ii) SEQ ID NOS: 17-19.

Similarly, with regard to Group 2, the Examiner states the sequences in the Markush group (i.e., SEQ ID NOS: 12-19) in claims 56 and 63, which recite an immunostimulatory CpG motif, need to be further restricted into the following two groups: i) SEQ ID NOS: 12-16 and ii) SEQ ID NOS: 17-19.

Applicant hereby elects, with traverse, Group 1 (i.e., claims 3, 7-16 and 47-51). Applicant also elects, with traverse, SEQ ID NOS: 12-16 in view of the two groups of sequences restricted out by the Examiner in claim 47. Traversal of this Restriction Requirement is on the basis that the imposed restriction unduly limits the scope of the subject matter Applicant regards as the invention.

### B. Summary of Applicant's Telephone Interview with the Examiner

Applicant, on May 23, 2007, contacted the Examiner by telephone to discuss the Office Action mailed March 16, 2007. In conformity with MPEP §713.04, Applicant offers the following recordation of this interview:

#### 1. A Brief Description of Exhibits or Demonstrations

Neither Applicant nor the Examiner offered any exhibits or demonstrations during the interview.



**2. Identification of the Claims Discussed**

Claims 3, 7-16 and 47-63 were discussed.

**3. Identification of Specific Prior Art**

No art was discussed during the interview.

**4. Principle Arguments of Applicant and the Examiner**

Applicant asserted that no undue burden would be placed on the Examiner by examining all pending claims (i.e., claims 3, 7-16 and 47-63). Specifically, Applicant and the Examiner discussed the Examiner's statement that, "while invention 1 embraces an embodiment in which an immunostimulatory sequence is present in the claimed aptamer, invention 1 does not require two immunostimulatory motifs."<sup>1</sup> As an example, Applicant and the Examiner discussed dependent claim 7 which (incorporating the elements of the claim from which it depends) reads:<sup>2</sup>

An aptamer comprising a first sequence capable of binding to a first target and a second sequence capable of binding to a second target wherein said first target does not upon binding of the aptamer stimulate an immune response and further wherein said second target does upon binding of the aptamer stimulate an immune response.

Applicant noted that while this claim does not require two immunostimulatory sequences, given the comprising language, it does not exclude more than one immunostimulatory sequence. Applicant also noted the Examiner admitted that, "[i]nvention 2 requires two distinct immunostimulatory sequences."<sup>3</sup> Given that a search of prior art relevant to the patentability of the claims of Group 1 would necessarily include a search for an aptamer with one *or more* immunostimulatory sequences, Applicant submitted that an art search of Groups 1 and 2 would be co-extensive and, therefore, would not pose an undue burden on the Examiner.

In addition, Applicant asserted the Examiner's restriction of the sequences in the Markush group in claims 47, 56, and 63 into two groups was arbitrary. Indeed, by the

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<sup>1</sup> Office Action mailed March 16, 2007, pp. 2-3.

<sup>2</sup> Claim 7 is within the Examiner's Group 1.

<sup>3</sup> Office Action mailed March 16, 2007, page 2.



Examiner's admission, each alleged Markush "sub-group" is within the same examination class and subclass (i.e., class 536 and subclass 23.1). Applicant again argued that a search of the intact Markush group (i.e., SEQ ID NO: 12 to SEQ ID NO: 19) would not pose an undue burden on the Examiner given: i) there are a total of eight sequences in the group and ii) the longest sequence in this group is a 24-mer. Finally, Applicant noted that this Markush group is presented in the context of dependent claims. That is to say, the scope of the pending claims would be unduly limited if the Examiner demands the independent claims be examined only in view of these eight sequences.

**5. Other Pertinent Matters Discussed**

Beyond issues related to the pending restriction, no other pertinent matters were discussed between Applicant and the Examiner.

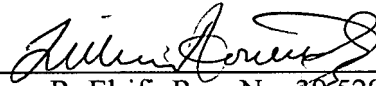
**6. Outcome of the Interview**

The Examiner noted the arguments offered by Applicant and said he would re-evaluate the pending restriction in view of the same.

**C. Conclusion**

Applicant and the undersigned thank the Examiner for the opportunity to discuss the pending restriction by telephone. Applicant respectfully requests that, for the reasons outlined above, the Examiner examine all the pending claims consistent with the guidelines set out in MPEP § 803. Should the Examiner believe a telephone interview would aid in the prosecution of this application, Applicant encourages the Examiner to call the undersigned collect at 617.542.6000.

Respectfully submitted,

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